IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4324 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAKSHIN GUJARAT KAMDAR ASSOCIATION - Petitioner(s)

Versus

C MAHENDRA DIAMOD MFG PVT LTD. & 4 - Respondent(s)

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Appearance :

MR NR SHAHANI for Petitioner No(s).: 1.
MR RR MARSHALL for Respondent No(s).: 1.
MR K L PANDYA AGP for Respondent No(s).: 2,3.
MR JD AJMERA for Respondent No(s).: 4.
MR NIRAL R MEHTA for Respondent No(s).: 4.
MS KETAKI B SHAH for Respondent No(s).: 5.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 15/07/2005

ORAL JUDGMENT

1.0 The petitioner has prayed for the following reliefs;

"(A) declaring that respondent no.1 has violated Sec.25-N and 25-F and is liable to be prosecuted u/s.25-Q and further directing the authoritites to commence such prosecution within a fortnight.

(B) directing the employer respondent no.1 to deposit all unpaid wages, bonus, gratuity and ESI contribution as well as Provident Fund Contribution in the Registry of this Hon'ble Court within a fortnight along with the detailed statements.

(C) directing the employer to reinstate the retrenched workers and give work to them in the order of seniority by preparing a Seniority list which should be made available to the petitioner union and all workers;

(D) any other and further reliefs as may be deemed just and proper by Y/L in view of several other statutory violations committed by this employer, and peculiar facts of this petition may please be granted.

(E) Cost of this petition may be quantified at Rs. 4,500/- and may be made payable by respondent no.1.

(F) During the pendency and final disposal of this S.C.A., Y/L be pleased to make an order (i) directing the employer respondent no.1 to continue to pay wages as required u/s.25-N(7) from month to month under supervisions of Asst. Commissioner of Labour / Govt. Officer; (ii) directing the authorities to prosecute the employer for offences u/s.25-N read with Sec. 25-Q of I.D.Act within a week; (iii) directing the employer respondent no.1 to deposit the unpaid wages and other dues, in terms of prayer (B) within a fortnight."

2.0 The workmen, represented through its Union, are employees of the respondent Company. It is the case of the petitioner that respondent no.1 is not giving any leave, bonus, gratuity etc or contributions like E.S.I.S or PF. On 18.04.1997 respondent no.1 had removed about 400 workers from

service.

2.1 Pursuant to the above, the petitioner Union addressed a letter to respondent no.3 complaining about the absence of Muster Roll, Attendance Slips, Identity Cards etc. On 23.04.1997 another complaint was lodged before the Government Labour Officer, Surat. The petitioner Union had also filed two cases for non-payment of gratuity and a case under the Equal Remuneration Act, 1976. By letter dated 25.04.1997, the Govt. Labour Officer had mentioned that the terminated workers were addressed by the A.C.L on the same day itself and that he had called a meeting for conciliation on 24.04.1997, but, the respondent employer had not remained present. Since no action has been taken by the respondent authorities, the petitioner has approached this Court by way of this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. Mr. KL Pandya learned AGP has placed on record a communication dated 11.09.1997, wherein it is stated that pursuant to the order of this Court, prosecution is already filed before the Court of the J.M.F.C., Surat. Therefore, Prayer (A) claimed by the petitioners is already granted.

3.1 So far as Prayers (B) & (C) are concerned, the

appropriate remedy available to the petitioner Union is to approach the appropriate authority under the appropriate Acts. No reliefs can be granted by this Court under Article 226 of the Constitution of India against a private party, and therefore, the said two Prayers cannot be granted by this Court.

3.2 Mr. N R Shahani learned advocate for the petitioner has requested that Prayer (F) which was granted by this Court on 28.08.1997 by way of interim relief be continued. Clause (ii) of the said Prayer (F) cannot be continued, since prosecution is already filed. So far as Clause (iii) of the said Prayer (F) is concerned, it is required to be noted that since the said direction was not complied with by the respondents, the petitioner had filed Contempt proceedings. However, learned advocate for the petitioner is not aware of the outcome in the said contempt proceedings. Therefore, the said Clause (ii) of Prayer (F) also cannot be continued.

3.3 So far as Clause (i) of Prayer (F) is concerned, the Assistant Commissioner of Labour is directed to ensure that regular payment is made as per the directions of this Court issued vide order dated 28.08.1997. Hence, Clause (i) of Prayer (F) is granted.

4.0 With the above clarification, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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